

STATE ALLOCATION BOARD

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Date: December 23, 2002

To: Interested Parties

**Subject: NOTICE OF THE STATE ALLOCATION BOARD IMPLEMENTATION
COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Tuesday, January 7, 2003 (9:30 am-3:30 pm) at the US Bank Plaza, 980 9th Street, Conference Room A, B & C, Sacramento CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. 2003 Implementation Committee Meeting Dates (cont'd)
3. SFP Enrollment Projection: Impacts as a Result of AB 14 (Goldberg), AB 1994 (Reyes) and Proposition 39 (cont'd)
4. Assembly Bill 14 (Goldberg) School Facilities (cont'd):
 - A. Charter Schools Proposed SFP Regulations
 - B. Charter Schools CSFA Financial Soundness Proposed Regulations
 - C. Increased Toxic Site Costs and Toxic Evaluation and Response for Additions to Existing Sites
5. AB 1506 (Wesson) Public Works: Labor Compliance (cont'd)
6. Use of New Construction Grants (cont'd)

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Portia Jacobson at (916) 323-4355.

BRUCE B. HANCOCK
Chairperson

BBH:mc

State Allocation Board Implementation Committee
January 7, 2003
AB 14: Charter School Facilities Program

At the December 4, 2002, State Allocation Board (SAB) Implementation Committee meeting, proposed regulations for the Charter School Facilities Program were presented. Listed below are the significant issues that were discussed at the meeting and the outcome of those issues.

1. There was further discussion regarding the amount of eligibility a charter can access from the district's new construction eligibility and if a "cap" should be placed in regulation. Various members of the audience and committee presented a couple of different proposals. The OPSC conferred with legal counsel and there is currently no authority in the law to limit the amount of eligibility a charter school can access from the district's remaining new construction eligibility. However, the California School Finance Authority (CSFA) will be reviewing the charter's enrollment (historical, current, and projected) as part of the financial soundness test. In addition the Charter School will be required to certify on the application that the number of pupils requested will ultimately be housed in the facility once constructed. Although a consensus was not reached on this issue, the OPSC believes that both the enrollment review and certification will serve as a check and balance in the amount of district new construction eligibility a charter school can access.
2. There was further discussion to review the maximum number of the preference points available for each category (40/40/20). A main issue of that discussion was the definition of non-profit in the proposed regulations. Concern was raised because it currently does not allow preference to be given to a Charter School organized as a nonprofit benefit corporation. In addition, a proposal was presented to provide an equal number of preference points for Low Income, Overcrowded School Districts, and Non-Profit. The OPSC agreed to review both the split of the preference points and also the language of non-profit. No action was taken in changing the preference points from 40/40/20. However, the definition of a non-profit entity was revised to include a non-profit public benefit corporation.
3. There was discussion regarding the use of facility once returned to the school district. If the district chooses to sell the facility, the question was asked would the pupils used to construct the project be added back into the baseline once sold? Although a consensus was not reached on this issue, the OPSC believes that once the eligibility has been reduced from the district's new construction baseline the pupils have been housed and will not be added back into the baseline if the facility is sold.
4. If a Charter School holds classroom instruction for 60 percent of the time and the remaining 40 percent is independent study, could an application for facility funding be filed by the Charter School? The *Enrollment Certification/Projection*, Form SAB 50-01 is used by school districts to report enrollment data for the purposes of generating new construction eligibility for a school district. Due to other AB 14 requirements, AB 1994, and Proposition 39, the Form is being amended to allow school district's to report only Charter School students

receiving classroom-based instruction as provided in EC Section 47612.5(e)(1). This Education Code Section requires that the instruction time at the school site be at least 80 percent of the minimum instructional time. In addition to the changes on the Form SAB 50-01, a statement has been added to the new *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 to advise charters that in order to file an application their enrollment must be eligible to be reported by the school district where the Charter School is physically located on the Form SAB 50-01.

5. There was discussion regarding the “Restricted Maintenance Account” that is required to be established by an applicant receiving School Facility Program funding. Should the ability of the charter to establish and maintain the fund be part of CSFA’s review in determining financial soundness. The OPSC has conferred with the CSFA and the ability to establish the fund will not be part of CSFA’s financial review because it is a review of past account/funds of the Charter School rather future. However, on the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09, the Charter School will certify to the establishment of the fund and the provisions in the Education Code.
6. At the November meeting, there was a discussion regarding whether charter schools can apply for Financial Hardship. The OPSC conferred with legal counsel regarding the viability for financial hardship status for charter school applications. It was found that there is currently no authority in law to allow charter schools to apply for financial hardship. The lease payments are in lieu of financial hardship therefore, no change to the proposal was necessary relating to this issue.
7. At the November meeting, a proposal was given to change the definition of small, medium, and large charter schools, as follows: Small Charter School shall be a school with pupils 100 or under, Medium Charter School shall be a school with pupils between 101-350 and a Large Charter School shall be a school with pupils over 351. The California Department of Education (CDE) provided data to support the above and it was found to be generally consistent with the proposal. It was agreed that this adjustment would be made and the proposed regulations include this change. (See Section 1859.2)

Additional Issues

1. Regulation Section 1859.162.1 has been added to the proposed regulations to establish a method for Charter Schools that serve a combination of grade levels (K-12, 7-12, etc) and therefore, reside in the boundaries of both an elementary and high school district to apply for funding.
2. As a result of the passage of AB 1506 – Labor Compliance, a certification to comply with the law was added to the Form 50-09.
3. AB 14 also changed the methodology for calculating site acquisition costs if toxic clean-up is required. For the purpose of determining funding at the time of preliminary apportionment the additional allowance will be automatic and

adjusted at the time of final apportionment based on substantiating documents (See Section 1859.145.1).

4. Another aspect of the law that has yet to be discussed at an Implementation Committee meeting is the request to consult with other regulatory agencies to streamline the school construction process (i.e., CDE site and plan approval, DSA plan approval and DTSC). The OPSC has conferred with CDE and the department is in the process of identifying those areas that could be streamlined with regards to plan approval. The OPSC has contacted the other regulatory agencies with the goal to work with these departments to assist charter schools in the construction process.

State Allocation Board Implementation Committee
January 7, 2003

Assembly Bill 14, Assembly Bill 1994, and Proposition 39: Enrollment Reporting

Background

Under current regulations, a school district may include pupils attending a charter school located outside of the geographical jurisdiction of the school district, as long as the student occupies space in a classroom. The district would report this information in its enrollment projection on the *Enrollment Certification/Projection*, Form SAB 50-01 to generate new construction eligibility. Proposition 39 hold districts accountable for providing facilities to in-district pupils attending charter schools located within their district boundaries regardless if they chartered the school. AB 1994 limits the ability of a school district to charter a school within their district boundaries. AB 14 clarifies how pupils attending charter schools shall be counted for the purpose of generating new construction eligibility under the School Facility Program.

Issue

In accordance with Education Code Section 47605, a school district will no longer have the ability to charter a school located outside its district boundaries. Education Code Section 17070.73 further states that a school district may only include in its enrollment the pupil attendance of a charter school that is physically located within the district's geographical jurisdiction (boundaries). If the charter school is physically located outside of the district boundaries, the district may not claim these pupils. These new requirements will require the modification of current enrollment reporting instructions, as well as adjustments to the new construction baseline eligibility under certain conditions.

Enrollment Instructions

The current Form SAB 50-01 instructions direct school districts to report all classroom- based students attending charter schools regardless of location. These instructions allow school districts to report the enrollment of charter schools located outside of the district boundaries. In order to comply with Proposition 39, AB 1994 and AB 14, the OPSC recommends the following changes to the SAB 50-01 instructions:

The enrollment data must include...

“...students receiving Classroom-Based Instruction¹ in charter schools located within the district boundaries and are enrolled in the same grade levels served by the district regardless if the district chartered the school...”

Do not include...

“...students receiving Classroom-Based Instruction in charter schools located within the district boundaries but are enrolled in grade levels not served by the district, students living inside district boundaries but are receiving Classroom-Based Instruction in charter schools located outside the district boundaries, students receiving Nonclassroom-Based Instruction²...”

¹ **“Classroom-Based Instruction”** shall have the meaning set forth in Education Section 47612.5(e)(1)

² **“Nonclassroom Based Instruction”** shall have the meaning set forth in Education Section 47612.5(d)(1) and (e)(2)

New Construction Baseline Adjustments

The OPSC anticipates that adjustments to the new construction baseline may be required under the following circumstance:

If a district's baseline eligibility contained enrollment from a charter school that was physically located outside of the district boundaries, a revised Form SAB 50-01 removing those pupils would be required to adjust the baseline eligibility. The district in which the charter school is physically located can now claim that enrollment and may submit a revised SAB 50-01 including that enrollment, which would require an adjustment to the district's eligibility.

There are two issues related to this statutory change, which include:

1. In the case of the above scenario how will the affected districts be identified?
2. Will OPSC automatically adjust the later district's baseline in the above scenario?

Discussion

Issue #1

This change will affect some of the new construction projects currently listed on the OPSC Workload list. Therefore, the OPSC will advise all school districts that beginning January 1, 2003 a revised SAB 50-01 may be needed to make adjustments to their new construction baseline eligibility for changes in enrollment due to charter schools. In cases where districts are now reporting charter school pupils located within district boundaries but previously reported by a different chartering district, the following shall apply

- The district will be required to submit a letter listing all charter schools located within district boundaries but were chartered by another school district, and
- Provide the name of the chartering school district and the number of eligible pupils for each charter school.

In cases where districts chartered schools outside of the district boundaries and previously reported this enrollment on the Form SAB 50-01; the following shall apply

- The district will be required to submit a letter listing the charter schools that were previously reported as part of the districts enrollment in the Form SAB 50-01 and are located outside the district boundaries; and,
- Provide the name of the school district where each charter school is physically located.

Issue #2

The Education Code does not provide the authority for OPSC to automatically adjust the district's baseline in the previous scenario; nor does it state that the district is required to revise their enrollment numbers. However, a charter school or a school district on behalf of a charter school filing an application for preliminary apportionment under the new Charter School Facilities Program (CSFP), must submit a revised 50-01 *Enrollment Projection Certification* Form including the charter school ADA as part of the application process. Therefore, the new construction eligibility baseline may need to be adjusted to properly account for the charter school enrollment based on these new regulations.

Recommendation

Present the attached proposed regulation amendments to the SAB.

AB 14 Charter School Facilities Program: Regulation Amendments

Amend Section 1859.2 as follows:

Section 1859.2 Definitions

"Approved Application For Charter School Funding" means a district filing on behalf of a charter school or the charter school submitting directly on *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), including all required supporting documents as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Authority" shall have the meaning set forth in Education Code Section 17078.52(c)(1).

"Charter School" shall mean a school established pursuant to Education Code Section 47600, et seq.

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(c)(4).

"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that complies with Section 1865.166.

"Form SAB 50-09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01-03), which is incorporated by reference.

"Large Charter School" shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report.

"Low-income" shall be those charter schools in which a percentage of the pupils receive free or reduced meals according to the California Department of Education.

"Medium Charter School" shall be defined as a school with between 101 pupils to 350 pupils, based on the latest available CBEDS report.

"Non-Profit Entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code Section 5110, et seq.

"Overcrowded School District" is any district that demonstrates eligibility over two percent of their unhoused pupils.

"Preliminary Charter School Application" means the charter has submitted Form SAB 50-09, including all documents that are required to be submitted with the application as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

"Region One" shall consist of the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Glenn, Tehama, Butte, Plumas, Sierra, Nevada, Placer, Yuba, Yolo, Sutter, Colusa, and Lake.

"Region Two" shall consist of the following counties: Sonoma, Napa, Yolo, Sacramento, El Dorado, Marin, Solano, Contra Costa, San Joaquin Amador, Alameda, Alpine, Calaveras, Mono, Tuolumne, Mariposa, Madera, Merced, Stanislaus, Santa Clara, Santa Cruz, San Mateo, San Francisco, San Benito, Fresno, Monterey, Kings, Tulare, and Inyo

"Region Three" shall consist of the following counties: San Luis Obispo, Kern, Santa Barbara, Ventura, San Bernardino, Los Angeles, Orange, Riverside, San Diego and Imperial.

"Rural Area" shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

"Small Charter School" shall be defined as a school with less than 100 pupils, based on the latest available California Basic Education Data System (CBEDS) report.

"Suburban Area" shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

"Urban Area" shall be as a school with a locale code of one as classified by the NCES.

Article 14. Charter School Facilities Program

Section 1859.160. General (Preliminary Charter School Apportionment).

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through 17078.64 for new construction shall complete and file a Form SAB 50-09.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.161. CSFP Preliminary Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment from the funding made available from Education Code Section 100620(a)(1)(A), shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003.

A Charter School seeking a Preliminary Charter School Apportionment out of the Education Code Section 100820(a)(1)(A) shall complete and submit Form SAB 50-09 between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing the funding.

The Board may establish additional application filing periods as needed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.53, Education Code.

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all the following criteria are met:

- (a) The district in which the Charter School is physically located must have SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50.
- (b) The pupil grants requested on the Form SAB 50-09 are at the grade level of project being proposed in the Charter School application.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.162.1. Overlapping District Boundaries.

If the Charter School provides instruction for a combination of grade levels and therefore resides in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Preliminary Charter School Application requesting pupil grant eligibility from each district, as appropriate will be required.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.54, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to the Board providing Preliminary Charter School Apportionments to a project, a certification from the Authority that the Charter School is Financially Sound will be required. The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.164. Application Funding Criteria.

If the amount of the Preliminary Charter School Applications received pursuant to Section 1859.161 exceed the funds available, the Financially Sound applications shall be identified in each of the following four categories:

- (a) Geographical Region One, Two, or Three.
- (b) Urban, Rural, and Suburban areas.
- (c) Large, Medium, and Small Charter Schools.
- (d) K-6, 7-8, and 9-12 grade levels.

The preference points calculated in Section 1859.164.1, will be used to determine the projects that will be funded from the categories set in (a) through (d) above. The Board shall first apportion one project of each possible type, a maximum of three, within each category starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points. If a project in subsequent categories has the highest preference points of a possible type but was previously apportioned under a prior category, the next project of the same type with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), based on the submittal of CSFP Preliminary Applications received.

If funds remain after funding one type of each category in (a) through (d), the Board will again start apportioning projects in category (a) and apportion one project of each type with the highest preference points previously not apportioned. If sufficient funds do not remain to apportion additional projects of each type, then the project(s) with the highest preference points will receive funding within each category.

All Preliminary Charter School Applications received from an Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same Charter School, those applications will be processed by the OPSC based on the priority order assigned to those applications by the Charter School on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all complete applications. A project shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a financially sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

<u>Percentage Receiving Free/Reduced Lunch</u>	<u>Preference Points Assigned</u>
<u>5-15%</u>	<u>4</u>
<u>16-30%</u>	<u>8</u>
<u>31-39%</u>	<u>12</u>
<u>40-48%</u>	<u>16</u>
<u>47-55%</u>	<u>20</u>
<u>56-64%</u>	<u>24</u>
<u>65-73%</u>	<u>28</u>
<u>74-82%</u>	<u>32</u>
<u>83-91%</u>	<u>36</u>
<u>92-100%</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) into the district's current enrollment (round up). Use the following sliding scale to determine the number of preference points:

<u>Percentage Overcrowded</u>	<u>Preference Points Assigned</u>
<u>2-5%</u>	<u>4</u>
<u>6-9%</u>	<u>8</u>
<u>10-13%</u>	<u>12</u>
<u>14-17%</u>	<u>16</u>
<u>18-21%</u>	<u>20</u>
<u>22-27%</u>	<u>24</u>
<u>28-34 %</u>	<u>28</u>
<u>35-41%</u>	<u>32</u>
<u>42-50%</u>	<u>36</u>
<u>51% and above</u>	<u>40</u>

- (c) Non-Profit Entity: If the Charter School is identified as meeting the definition of a Non-Profit Entity, the project will receive 20 preference points

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

1859.165. Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

- (a) The Final Charter School Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04, which cannot exceed more than 100 percent of the pupils the Charter School originally requested and received at the Preliminary Charter School Apportionment.
- (c) The request for the number of pupils reported on Form SAB 50-04 shall be enrolled and housed in the classrooms constructed in the project.

If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.166. Time Limit on Preliminary Charter School Apportionment.

- (a) A Preliminary Charter School Apportionment shall be converted or requested to be converted to a Final Charter School Apportionment pursuant to Section 1859.165 after three years from the date the Preliminary Charter School Apportionment was made unless the Charter School received approval of an extension pursuant to Section 1859.166.1.
- (b) If (a) above is not met, the Preliminary Charter School Apportionment shall be rescinded and the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.
- (c) Any Preliminary Charter School Apportionment rescinded as a result of this Section shall be transferred to the Charter School Facilities Unrestricted Fund.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

A Charter School that has received a Preliminary Charter School Apportionment may request a one-year extension of the time limit on the apportionment prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The Charter School has provided evidence of both of the following:
 - (1) The CDE has made a contingent or final approval of the proposed site; and,
 - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
 - (1) If the balance in the Unrestricted Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment. The Final Charter School Apportionment shall become the full and final apportionment for the project.
 - (2) If the balance in the Unrestricted Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment. Any remaining balance in the Unrestricted Charter School Facilities Account shall be converted to a Final Charter School Apportionment and shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Charter School Facilities Account pursuant to this Subsection (a) shall be used by the Board for other Charter School Facility projects.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the Charter School will be subject to the matching share requirement in Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

Section 1589.169. Eligible Expenditures.

Charter School Program grants that are converted to a Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52, Education Code.

Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article, shall comply with the requirements of Sections 1859.100, 1859.101, and 1859.102.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17072.34 and 17078.54, Education Code.

Section 1859.171. Use of Facility.

The facility may continue to be used by a Charter School as prescribed in Education Code Section 17078.62(a). Once a charter is no longer occupying the facility, the school district where the charter is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
 - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
 - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites and any remaining balance shall be used to pay the local matching share, if any.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.

Other Regulation Amendments as a Result of AB 14

Section 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:
 - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
 - (3) used for school library purposes during the previous school year.
- (i) owned but leased to another district.
- (j) any portable classroom excluded by Education Code Section 17071.30.
- (k) that is permanent space and leased for less than five years.
- (l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.
- (m) that was acquired with joint-use funds specifically available for that purpose.
- (n) that were provided to a Charter School in lieu of providing school district eligibility.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17071.25, 17070.73, 17071.30 and 17077.40, Education Code.

Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.160.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82 (a).
- (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:
 - (1) That is a trailer and transportable/towed on its own wheels and axles.
 - (2) Of less than 700 interior square feet.
 - (3) Excluded pursuant to Education Code Section 17071.30.
 - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
 - (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
 - (6) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
 - (7) That was acquired with joint-use funds specifically available for that purpose.
- (j) For ~~s~~Small ~~s~~School ~~d~~Districts, decreased:
 - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
 - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
- (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
- (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.167.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 and 17077.40, Education Code.

Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by

the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63 and 17077.40, Education Code.

Section 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.434120 for Joint-Use Projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of the site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).
- (c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.434120 for Joint-Use Projects, Section

1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251 (b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50 (b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10 (c).

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
 - (1) \$5,226.82 for each elementary school pupil.
 - (2) \$5,533.65 for each middle school pupil.
 - (3) \$7,225.94 for each high school pupil.
 - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
 - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
 - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
 - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
 - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size when the following criteria are met equal to the following:
 - (1) The district has requested an increase for multilevel construction pursuant to (b) above. If the sum of the proposed useable acreage requested on Form SAB 50-08 and any existing useable acreage at the

- proposed school site (if applicable) is at least 50 percent but less than 75 percent of the site acreage determined in (4) below, an amount equal to eight percent of the amount determined in (a).
- (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by ~~If the sum of the proposed useable acreage requested on Form SAB 50-08 and any existing useable acreage at the proposed school site (if applicable) is at least 30 percent but less than 50 percent of the site acreage determined in (4) below, an amount equal to 15 percent of the amount determined in (a).~~
 - ~~(3) If the sum of the proposed useable acreage requested on Form SAB 50-08, and any existing useable acreage at the proposed school site (if applicable) is less than 30 percent of the site acreage determined in (4) below, an amount equal to 50 percent of the amount determined in (a).~~
 - ~~(4) Multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For the purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.~~
 - (3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing site.
 - (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
 - (h) For purposes of COS projects, An amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For purposes of charter schools, an amount equal to nine percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2002.
 - (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.

The amounts shown in (a) shall be adjusted annually in a manner prescribed in Section 1859.71.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.145.1. Preliminary Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
 - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application or Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not

exceed the proposed usable acreage requested on Form SAB 50-08 or Form SAB 50-09, as appropriate.

- (2) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50-08 or Form SAB 50-09, as appropriate. Historical information that may be considered to determine land cost may include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a period of up to two years prior to the date the Preliminary Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
 - (1) 21 percent of the value determined in (a).
 - (2) The sum of the following:
 - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
 - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
 - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, one-half times the value of the property determined in either (a)(1) or (a)(2) above.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

**State Allocation Board Implementation Committee
January 7, 2003**

Assistance for Site Acquisition and Response Action

ISSUES

Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, allows for increased site funding for toxics when specified conditions have been met. It also provides additional funding for evaluation and response action in connection with hazardous substances at an existing school site. There are two issues related to these statutory changes which include:

1. For purposes of Education Code Section 17072.13(a) and (b), what criteria will be utilized to provide toxic funding in excess of 50 or 100 percent of one and one-half times the appraised value?
2. What will the mechanism be for the advance release of funding for toxic evaluation and response action on existing school sites?

BACKGROUND

Prior to AB 14, existing law authorized State funding for up to 50 percent of the school district's cost of the site plus the response action costs associated with hazardous substances but not to exceed the appraised value of the site.

Pursuant to AB 14, Education Code Section 17072.13 modifies the funding formula to increase the State's share for purposes of toxics clean-up of a site. However, in order to receive that increased funding, there are specific conditions that need to be met. The following issues are discussed below:

DISCUSSION

Issue Number 1:

Education Code Section 17072.13 stipulates that site and toxics funding shall not exceed 50 or 100 percent of one and one-half times the appraised value of the uncontaminated site. In a 50/50 example, this means that the "new" total spending cap on a site that is appraised at \$10 million, with toxic remediation issues, would be \$15 million (\$10 million x 50 percent = \$5 million, so \$10 million + \$5 million = \$15 million). In this example, the State's share for a 50/50 project would be \$7.5 million, that would provide half the site value at \$5 million and half the toxic cost at \$2.5 million. This change allows districts to receive additional dollars in order to clean-up toxic site problems beyond the original appraised value "cap." This change will be addressed by modifying current site toxic regulations. The same methodology would be calculated for financial hardship projects, but the State's share is 100 percent, less any available district contribution for the project.

Education Code Section 17072.13 further states that the Board may exceed this 50 or 100 percent of one and one-half times the appraised value maximum for projects that demonstrate circumstances of extreme need. In order to ensure program integrity and encourage cost-effective site decisions, the OPSC is proposing criteria that districts will be required to meet prior to receiving the additional toxic funding. They are as follows:

- California Department of Education (CDE) determination that the site is the best available site for meeting the educational and safety needs of the school district.
- Substantiation that the district exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and response action approved by the DTSC.

Issue No. 2:

Current regulation would provide funding for response action for hazardous remediation on an existing school site. AB 14 provides that the evaluation and response action costs shall be available to school districts in advance of the submittal of the construction funding application. As a result of this statutory change, no mechanism exists for the funding of these costs on existing school sites in advance of the submittal of the construction funding application. Staff proposes to modify current environmental hardship regulations to allow for funding on existing school sites in advance of the submittal of the construction funding application for evaluation and response action for hazardous remediation.

RECOMMENDATIONS

1. Modify existing Regulation Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, and 1859.81.1 to reflect new toxics spending caps and criteria for extreme need.
2. Modify Form SAB 50-04 to incorporate the new toxics spending caps.

Amend Regulation Section 1859.74.2 as follows:

Section 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable site costs shall not exceed the lesser of one and one half of (a) or (b) below times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

- (a) The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (1) ~~The costs may include~~ The costs for preparation of the RA.
 - (2) ~~The costs may include~~ The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (c) Not less than \$50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- ~~(3) The costs may not include continuous operational and maintenance costs associated with the RA.~~
- ~~(e) The difference in the amounts determined pursuant to Section 1859.74 (a) and (b).~~

~~In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).~~

- ~~(d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:~~
 - ~~(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.~~
 - ~~(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.~~

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Amend Regulation Section 1859.74.3 as follows:

Section 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes and a site evaluation requires a RA, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the lesser of one and one half times the appraised

valuation that conforms to Section 1859.74.1 of the amounts allowed in (a) or (b) below: The allowable site costs shall not exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

- (a) The sum of all the following: The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (1) The costs for preparation of the RA.
 - (2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (c) Not less than \$50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- ~~(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.~~
- ~~(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:~~
 - ~~(A) The costs may include the costs for preparation of the RA.~~
 - ~~(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.~~
 - ~~(C) The costs may not include continuous operational and maintenance costs associated with the RA.~~
- ~~(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.~~
- (d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
 - (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
 - (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.
- (e) If the toxics evaluation of the leased site does not require a RA, then the allowable site costs shall not exceed the lesser of one half the appraised or actual purchase price plus the additional amounts provided in Section 1859.74.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12, 17251 and 17070.71, Education Code.

Amend Regulation Section 1859.74.4 as follows:

Section 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

- (a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:
 - (1) The New Construction Grant request is for additional school facilities on an existing school site.
 - (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
 - (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
 - (4) The hazardous material cleanup costs are required by the DTSC.
- (b) If all the criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:
 - (1) The costs for preparation of the POESA, the PEA and the RA.
 - (2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
 - (A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
 - (B) The costs may not include continuous operational and maintenance costs associated with the RA.
- (c) In advance of the New Construction Adjusted Grant, districts performing a RA on additions to existing school sites shall be eligible for the costs associated with evaluation and RA required by the DTSC.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.18, Education Code.

Amend Regulation Section 1859.75 as follows:

Section 1859.75. Alternative District-Owned Site.

In order to receive funding authorized by Sections 1859.74 or 1859.74.2, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize either (1) or (2) the lesser of:
 - (1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or
 - (2) fifty percent of one and one-half times the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74.2, whichever is the lesser.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Section 17072.12, Education Code.

Amend Regulation Section 1859.75.1 as follows:

Section 1859.75.1. Separate Site Apportionment for Environmental Hardship.

- (a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:
 - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
 - (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.
 - (4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.
- (b) If the conditions in (a) are met, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (b)(1) and (b)(4) plus the additional costs included in (b)(2) and (b)(3). The costs included in (b)(2) and (b)(3) are in addition to the one and one half times the appraisal value cap for one half of the following:
 - (1) ~~The lesser of the appraised value~~ cost of the site as determined in Section 1859.74.1 and ~~or~~ the amount the district reasonably expects to pay for ~~the site including~~ any hazardous materials/waste removal and/or remediation costs for the site.
 - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
 - (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.

- (c) In lieu of the funding provided in (b) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
 - (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
 - (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17076.10, Education Code.

Amend Regulation Section 1859.81.1 as follows:

Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) For a new construction project, a separate apportionment for site acquisition when all the following requirements are met:
 - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
 - (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.
- (b) If the conditions in (a) are met on a site that does not require a RA, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):
 - (1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.
 - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.
 - (4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.
- (c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to the one and one half times the appraisal value cap.
 - (1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.
 - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
 - (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.
- (d) In lieu of the funding provided in (c) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
 - (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
 - (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

- (e) ~~(e)~~ For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:
- (1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).
 - (2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

Note: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code.

Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

**State Allocation Board
Implementation Committee
January 7, 2003**

Implementation of AB 1506 – Labor Compliance

BACKGROUND

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) receive a written finding from the local school board that a labor compliance program (LCP) for the project apportioned under the SFP has been initiated and enforced prior to a release of funds. This requirement is applicable to fund releases made for any SFP new construction or modernization project for which work commenced on or after April 1, 2003.

In addition, the SAB is required to increase the per-pupil grants to reflect the increased costs of the initiation and enforcement of the LCP.

At the November and December SAB Implementation Committee meetings, the Office of Public School Construction (OPSC) presented discussion papers. As a result of the discussions, it became clear that very few districts currently have a LCP and the districts will require assistance to carryout the requirements of this legislation. As a result of this need, a workgroup was established that has met on several occasions to develop a model LCP and a companion guidebook for use by applicant school districts.

PROPOSALS

Affected Projects

Prior to receiving a fund release, a district shall be required to make the certification as described in Labor Code Section 1771.7 if both of the following circumstances exist:

- The district has a project which received and apportionment from the funding provided in Proposition 47, and
- The Notice to Proceed for the construction phase of a project has been or will be issued on or after April 1, 2003.

Therefore, applications that receive funding from Proposition 47, and are for projects in which the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003, will be required to make the certification on the Fund Release Authorization, Form SAB 50-05. This will mean that projects funded on or after the December 18, 2002 SAB meeting, which the district signed or signs contracts and immediately submitted its Form SAB 50-05 but then issues its Notice to Proceed on or after April 1, 2003, are still subject to the requirements of this law.

Implementation

With input received from the SAB Implementation Committee AB 1506 Workgroup, the Department of Industrial Relations is recommended to develop a model Labor

Compliance Program model and companion guidebook for use by applicant school districts. The purpose of the model LCP and guidebook will be the following:

- To assist Districts in preparing a program which meets the requirements on Labor Code Section 1771.5 (b).
- To assist Districts in obtaining timely approval of the LCP by the Department of Industrial Relations, if that is necessary.

The model LCP and guidebook contains at least the following elements:

- Introduction to AB 1506
- Benefits of a Comprehensive LCP
- LCP Components
- Steps to Obtain DIR Certification/Approval for your LCP, if necessary
- District Staff Responsibilities
- Guidelines for Prevailing Wage and Certified Payroll
- Guidelines for Enforcement
- Contact and Resource Information
- Commonly Used Terms
- Public Works Process Emphasizing LCP Actions Flowchart
- LCP Checklist
- Model LCP Manual
- Third Party Providers Checklist

Grant Increase

AB 1506 requires the SAB to increase the per pupil grant amounts in EC Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a labor compliance program.

The grant increases shall be made to any new construction or modernization SFP projects, funded or unfunded, which are subject to the requirements of AB 1506.

Emergency Regulations

The SAB shall adopt the proposed regulations as emergency regulations on the basis that fund releases will not be made to affected projects after April 1, 2003, and that failure to fund projects in a timely manner will adversely affect the students and faculty to be housed in the projects.

RECOMMENDATION

Present the attached proposed regulation amendments to the SAB.

LABOR CODE

1771.5. (a) Notwithstanding Section **1771**, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a **labor** compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a **labor** compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state **labor** law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

Amend Section 1859.2 as follows:

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAs that will make up the Super HSA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

“Approved Application(s)” means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 09/02); SAB 50-02, *Existing School Building Capacity*, (Revised 09/02); SAB 50-03, *Eligibility Determination*, (Revised 09/02); and SAB 50-04, *Application for Funding*, (Revised 09/02), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

“Approved Application for Joint-Use Funding” means a district has submitted an *Application for Joint-Use Funding*, Form SAB 50-07 (New 09/02), including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

“Attendance Area” shall have the meaning set forth in Education Code Section 17070.15(b).

“Board” means the State Allocation Board as established by Section 15490 of the Government Code.

“CBEDS Report” means the enrollment information provided through the California Basic Education Data System by school districts to the CDE.

“California Department of Education” (CDE) means the offices within that department that have responsibility for school facilities matters.

“CDE Source School List” means a list developed and published by the CDE that identifies districts and Critically Overcrowded Schools pursuant to Education Code Section 17078.18(c).

“CEC” means the California Energy Resources, Conservation and Development Commission.

“Certification” means the act of affirmatively representing, asserting or verifying circumstances, data or information as required by the Act or this subgroup.

“Childcare” means any program that is operated less than 24-hours per day, in which non-medical, licensed care and supervision are provided to children in a group setting.

“Class B Construction Cost Index” is a construction factor index that is provided monthly by Marshall and Swift, for the Western area, for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

“Classroom” means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

“Classroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(e)(1).

“Classroom Provided” means a classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.

“Committee” shall have the meaning set forth in Education Code Section 17070.15(e).

“Comprehensive High School” means a high school that serves grades 7-12 or 9-12 that offers a variety of curricula, including common courses that emphasize academic achievement and traditional subjects that all students are required to take.

“County Fund” shall have the meaning set forth in Education Code Section 17070.15(j).

“Critically Overcrowded School (COS)” means a school that has a pupil population density greater than 115 pupils per useable acre in grades Kindergarten through six, or a pupil population density greater than 90 pupils per useable acre in grades seven through twelve based on the 2001 CBEDS enrollment.

“Current Replacement Cost” means \$346.60 per square foot for Toilet Facilities and \$192.60 per square foot for all other spaces. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

“Department” shall have the meaning set forth in Education Code Section 17070.15(d).

“District Representative” means a member of a school district staff or other agent authorized to serve as

“District Representative” to execute and file an application with the Board on behalf of the district and/or act as liaison between the Board and the district.

“Division of the State Architect (DSA)” means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety and access compliance.

“Elementary School Pupil” means a student housed in a school serving Kindergarten through sixth grade, or any combination of Kindergarten through sixth grade.

“Encumbered for Specific Purposes” means a commitment of funds by the school district to meet a legally binding obligation.

“Energy Audit” means an energy analysis and report which sets forth the utility savings that could be generated if the proposed project was designed, constructed, and equipped with energy efficiency and renewable technologies that would make the proposed project exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the applicable California Building Standards Code.

“Energy Efficiency Account” means the funds set aside by the Board for purposes of Education Code Section 17077.35.

“EnergyPro 3.1” means a computer program approved by the CEC that calculates energy efficiency standards.

“Environmental Hardship” means the State funding for site acquisition as authorized by Section 1859.75.1.

“Excessive Cost Hardship Grant” means the funding provided by Section 1859.83.

“Executive Officer” means the individual appointed by the Governor to direct the Office of Public School Construction, and who concurrently serves as Executive Officer to the Board.

“Existing School Building Capacity” means the district’s total capacity to house pupils as calculated pursuant to Sections 1859.30 through 1859.33.

“Extra Cost” means the added costs to complete a Type II Joint-Use Project as determined in Section 1859.125.1.

“Facility” means all or a portion of any real property, site improvements, utilities and/or buildings or other improvements contained in the project.

“Facility Hardship” means new or replacement facilities authorized by Section 1859.82 (a) or (b).

“Field Act Facility” means a school building meeting the requirements contained in Education Code Section 17280, et seq.

“Final Apportionment” means an apportionment made pursuant to Education Code Section 17070.15 by submittal of an application pursuant to Section 1859.21.

“Final Apportionment Unfunded List” means a list of projects where the entire Final Apportionment request was not converted to a Final Apportionment.

Financial Hardship” means State funding for all or a portion of the district’s matching share required by Section 1859.77.1 or 1859.79.

“Form SAB 50-01” means the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-02" means the *Existing School Building Capacity*, Form SAB 50-02 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-03" means the *Eligibility Determination*, Form SAB 50-03 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-04" means the *Application For Funding*, Form SAB 50-04 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-05" means the *Fund Release Authorization*, Form SAB 50-05 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-06" means the *Expenditure Report*, Form SAB 50-06 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-07" means the *Application For Joint-Use Funding*, Form SAB 50-07 (New 09/02), which is incorporated by reference.

"Form SAB 50-08" means the *Application For Preliminary Apportionment*, Form SAB 50-08 (New 09/02), which is incorporated by reference.

"Fund" shall have the meaning set forth in Education Code Section 17070.15(i).

"General Location" means the proposed location of a new school as set forth in Education Code Section 17078.22 and Section 1859.142.

"Governmental Agency" shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

"High School Attendance Area (HSAA)" means an attendance area that serves a currently operated high school, other than a continuation school or a community school.

"High School District" means a school district that serves any combination of grades seven through twelve exclusively.

"High School Pupil" means a student in a school serving ninth through twelfth grade or any combination of ninth through twelfth grade.

"Higher Education" means an entity that is a public community college; a public college; a public university; or a non-profit/accredited organization of higher education.

"In Escrow, Governmental Entities" means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Inadequate" means, for purposes of Joint-Use Projects, the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart in Section 1859.124.1.

"Independent Audit" means an examination and report of the district's accounts by a certified public accounting firm.

"Individual with Exceptional Needs" shall have the meaning set forth in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"Instrument" means a written, legally enforceable agreement, approved and signed by all parties to the escrow, for the conveyance to the district of real estate for a specified parcel or site, that includes a compensation clause and either a purchase option agreement, a purchase agreement, promissory note, lease agreement, installment sales contract, gift, or other real estate conveyance valid in the State of California for property conveyed from a public/government entity, including the federal government.

"Interim Housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities.

"Joint-Use Project" means a project approved by the Board pursuant to Education Code Sections 17050, 17051, or 17077.40.

“Joint-Use Partner(s)” means an entity or entities that has entered into a joint-use agreement pursuant to the provisions of Education Code Section 17077.42.

“Large New Construction Project” means a funding application request for at least 200 New Construction Grants which will be used to construct a new Comprehensive High School or an addition to a Comprehensive High School.

“Large Modernization Project” means a funding application request for Modernization Grant(s) that exceed 50 percent of the current CBEDS enrollment of a Comprehensive High School that will be modernized.

“Lease-Purchase Program (LPP)” means the Leroy F. Greene State School Building Lease-Purchase Law of 1976, commencing with Education Code Section 17000.

“Major Maintenance” shall have the meaning set forth in Education Code Section 17070.77(b).

“Material Inaccuracy” means any falsely certified eligibility or funding application related information submitted by school districts, architects or other design professionals that allowed the school district an advantage in the funding process.

“Median Cost” means, for purposes of a Preliminary Apportionment, the middle number in a given sequence of property value numbers, or the average of the middle two property value numbers when the given sequence of property value numbers has an even number of numbers.

“Mello-Roos Bonds” means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

“Middle School Pupil” means a student in a school serving sixth through eighth grade, or seventh and eighth grades.

“Modernization” shall have the meaning set forth in Education Code Section 17070.15(f) for purposes of projects subject to Subgroup 5.5, Article 2, commencing with Section 1859 or Education Code Section 17021 under the Lease-Purchase Program.

“Modernization Adjusted Grant” means the Modernization Grant, plus any other funding provided by these Regulations.

“Modernization Grant” means the funding provided pursuant to Education Code Section 17074.10(a) and Sections 1859.78, 1859.78.3 and 1859.78.6.

“Modernization Eligibility” means the result of the calculation contained in either Option A or B of the Form SAB 50-03.

“Multi-Track Year-Round Education (MTYRE)” means a school education program in which the students are divided into three or more groups on alternating tracks, with at least one group out of session, and the other groups in session during the same period.

“New Construction Adjusted Grant” means the New Construction Grant, plus any other funding provided by these Regulations.

“New Construction Eligibility” means the result of the calculation determined in Education Code Section 17071.75.

“New Construction Grant” means the funding provided pursuant to Education Code Section 17072.10(a) and Sections 1859.71 and 1859.71.1.

“Nonclassroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(d)(1) and (e)(2).

“Non-Profit Organization” means an entity that is organized and operated for purposes of not making a profit under the provisions of the Revenue and Taxation Code.

“Non-Severely Disabled Individual with Exceptional Needs” means an individual with exceptional needs not defined in Education Code Section 56030.5 but included in 34 Code of Federal Regulations Part 300.5.

“Office of Public School Construction (OPSC)” means the State office within the Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director.

“Permanent Area” means any area not included in a portable classroom.

“Permanent Classroom” means any classroom not meeting the definition of portable classroom.

“Phase C Approval” means the construction approval by the Board under the Lease-Purchase Program.

“Phase One Environmental Site Assessment (POESA)” shall have the meaning set forth in Education Code Section 17210(g).

"Phase P Approval" means the planning approval by the Board under the Lease-Purchase Program.

"Phase S Approval" means the site approval by the Board under the Lease-Purchase Program.

"Portable Classroom" shall have the meaning set forth in Education Code Section 17070.15(k).

"Preliminary Endangerment Assessment (PEA)" shall have the meaning set forth in Education Code Section 17210(h).

"Preliminary Application" means the district has submitted Form SAB 50-08, including all documents that are required to be submitted with the application as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Apportionment" means an apportionment made pursuant to Education Code Section 17078.10(c).

"Preliminary Plans" means a set of architectural drawings not approved by the DSA that provide a preliminary design.

"Priority One" shall have the meaning set forth in Education Code Section 17017.7(a)(1).

"Priority Two" shall have the meaning set forth in Education Code Section 17017.7(a)(2).

"Property" shall have the meaning set forth in Education Code Section 17070.15(g).

"Proposition 1A" means the Initiative Measure (Prop. 1A) enacted by passage at the November 4, 1998 general election.

"Proposition 39" means the Initiative Measure (Prop. 39) enacted by passage at the November 7, 2000 general election which amended Sections 15102, 15106, 35233, and 72533 and added Chapter 1.5 (commencing with Section 15264) to Part 10, of the Education Code, and added applicable sections of the California Constitution relating to passage of local school bonds with a 55 percent vote of the electorate at a primary or general election, a regularly scheduled local election, or a statewide special election.

"Proposition 47" means the Kindergarten-University Public Education Facilities Bond Act of 2002.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve.

"Qualifying Pupils" means enrollment in excess of 86 pupils per useable acre for Kindergarten through sixth grade or 68 pupils per useable acre for grades seven through twelve.

"Quarterly Basis" means a three-month period commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"Ready for Apportionment" means a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an apportionment or eligibility determination, and the OPSC will recommend approval to the Board.

"Rehabilitation Cost" means health and safety mitigation cost that is less than 50 percent of the current replacement cost of the facility.

"Remedial Action Plan (RAP)" means a plan approved by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356.1.

"Resource Specialist Program" means pupils that meet the definition of Non-Severely Disabled Individual with Exceptional Needs as defined in Section 1859.2 that are not enrolled in a special day class.

"Response Action (RA)" means the removal of hazardous materials and solid waste, the removal of hazardous substances, and other remedial actions in connection with hazardous substances at the site.

"Restricted Fund" means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account approved for a Preliminary Apportionment(s).

"School Building Capacity" shall have the meaning set forth in Education Code Section 17070.15(l).

"School District" shall have the meaning set forth in Education Code Section 17070.15(h).

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300, to generate school facilities funding.

"School Facility Program (SFP)" means either the new construction or modernization programs implemented under the Act, by these Subgroup 5.5 regulations.

"SFP New Construction Account" means the fund for new construction projects authorized by Sections 100620(a)(1) and 100820(a)(1).

"Secondary School Pupil" means a student in the seventh through the twelfth grade.

"Section" means a section in these Subgroup 5.5 regulations.

“Severely Disabled Individual with Exceptional Needs” means an individual with exceptional needs as defined in Education Code Section 56030.5.

“Small School District” means a school district with districtwide enrollment reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C on the latest Form SAB 50-01, used to determine or adjust the district’s baseline eligibility pursuant to Sections 1859.50 and 1859.51 or submitted separately to the OPSC, that is 2,500 or less.

“Source School” means a Critically Overcrowded School included on the CDE Source School List that has Qualifying Pupils.

“Special Day Class” means a class that has pupils enrolled that are individuals with exceptional needs.

“Square Footage” means the enclosed area measured from the outside face of exterior structural walls of the building. For interior areas or portions of building areas, the enclosed area shall be measured from the centerline of the interior demising wall.

“Student Yield Factor” means the number of students each dwelling unit will generate for purposes of an enrollment augmentation.

“Substantial Enrollment Requirement (SER)” means a district that is operating on a Multi-Track Year-Round Education basis pursuant to Education Code Sections 17017.6 and 17017.7(c).

“Super High School Attendance Area (Super HSAA)” means two or more HSAA’s that are adjacent to each other.

“Teacher Education” means courses for credential programs or enhancement courses that are professional growth courses for elementary, secondary, higher education and special education instructors.

“Toilet Facilities” means restroom area, shower/locker area or physical therapy area for Individuals with Exceptional Needs.

“Type I Joint-Use Project” means a project that meets the criteria of Education Code Section 17077.40(b)(1).

“Type II Joint-Use Project” means a project that meets the criteria of Education Code Section 17077.40(b)(2).

“Type III Joint-Use Project” means a project that meets the criteria of Education Code Section 17077.40(b)(3).

“Unfunded List” means an information list of unfunded projects.

“Unrestricted Fund” means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not approved for a Preliminary Apportionment(s).

“Useable Acres” means the gross acreage of a school site less any portion of the site publicly dedicated for off-site street improvements and any portion of the site not available for school purposes as determined by the CDE because of topological impediments or because of other unique circumstances.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17074.10, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17280, 47612.5(d)(1) and (e)(2), 47612.5(e)(1), and 56026, Education Code. Section 53311, Government Code.